

Message Text

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ACTION ARA-20

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FM AMEMBASSY BRASILIA

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INFO AMCONSUL PORTO ALEGRE

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DEPARTMENT PASS JUSTICE, ATTENTION CIVIL DIVISION, AND
ARA/LA/MGT

E.O. 11652: N/A

TAGS/ AFSP

SUBJECT: LABOR SUIT AGAINST AMCONSUL PORTO ALEGRE

1. ON JULY 26, 1973 THE CONSULATE IN PORTO ALEGRE RECEIVED
A SUMMONS TO APPEAR BEFORE THE 13TH LABOR COURT, IN THAT CITY,
ON MONDAY, AUGUST 6, AS THE DEFENDANT IN A LABOR SUIT BROUGHT
BY ULISSES FRANCISCO DUTRA. THE SUMMONS WAS ISSUED IN THE
NAME OF THE QUOTE AMERICAN CONSULATE -- RUA URUGUAI 155 -- 11
ANDAR--N/C UNQUOTE.

2. EMBASSY WAS INFORMED TELEPHONICALLY OF THE PENDING SUIT BY
AMCONSUL PORTO ALEGRE, ON AUGUST 2. AMCONSUL WAS INSTRUCTED
BY THE EMBASSY AND DR. JARDIM TO SEEK ASSISTANCE FROM LOCAL
COUNSEL AND ATTEMPT TO OBTAIN POSTPONEMENT OF THE HEARING
PENDING RECEIPT OF INSTRUCTIONS FROM WASHINGTON. MR. ROBERTO
CARRION, THE LAWYER WHO ASSISTED DR. EDUARDO JARDIM IN THE
FERNANDES DA SILVA CASE, WAS CALLED UPON TO PROVIDE
ASSISTANCE.

3. ON AUGUST 6, 1973 MR. CARRION APPEARED IN COURT TO SEEK
A POSTPONEMENT OF THE HEARING BUT WAS UNSUCCESSFUL. IN
ORDER TO AVOID LOSING THE CASE BY DEFAULT HE PRESENTED A
MOTION TO THE COURT, FOLLOWING THE LINES OF THE MOTION USED
BY DR. JARDIM IN THE FERNANDES DA SILVA CASE, I.E., THAT,
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(A) THE SERVICE OF THE SUMMONS WAS IMPROPER, AS THE DEFENDANT

SHOULD NOT HAVE BEEN THE AMERICAN CONSULATE, BUT RATHER THE
EMBASSY OF THE UNITED STATES,
(B) THE BRAZILIAN COURTS LACKED JURISDICTION IN THE CASE.

4. MR. DUTRA'S CLAIM IS FOR SEVERANCE PAY AND OTHER BENEFITS
TOTALING APPROXIMATELY CR\$10,000 IN CONNECTION WITH "THE
TERMINATION OF HIS SERVICES FOR THE CONSULATE IN PORTO ALEGRE,"
WHERE HE STATES HE WAS EMPLOYED FROM JANUARY 13, 1960 THROUGH
JULY 18, 1973.

5. ALTHOUGH MR. DUTRA STATES HE WAS AN EMPLOYEE OF THE CONSULATE
AND THAT IS THE BASIS OF HIS CLAIM, NO SUCH RELATIONSHIP EVER
EXISTED. HE WAS NEVER REPEAT NEVER AN EMPLOYEE OF THE
CONSULATE AND NO DOCUMENT TO THAT EFFECT EXISTS, OR IS PRESENTED
IN HIS CLAIM. MR. DUTRA, IN FACT, WAS SELF-EMPLOYED, AND
PERFORMED ODD JOBS AND ERRANDS ON A TIP BASIS FOR ALL THE
TENANTS OF THE LARGE COMMERCIAL OFFICE BUILDING IN WHICH THE
CONSULATE IS LOCATED. HE DID NOT WORK IN THE CONSULATE, AS
CLAIMED, BUT RATHER REMAINED IN THE COMMON LOBBY OF THE BUILDING.
FINALLY, HE WAS NOT DISMISSED BY THE CONSUL, WHO HAD NO CAUSE
OR POWER TO DO SO, AND IT IS NOT CLEAR TO US WHAT
PROMPTED HIM TO START THE LAW SUIT.

6. IN VIEW OF THE ABOVE CIRCUMSTANCES EMBASSY REQUESTS:
(A) RETROACTIVE APPROVAL TO RETAIN MR. CARRION AS COUNSEL
IN THIS CASE, AND EXECUTE A POWER OF ATTORNEY.
(B) CONCURRENCE IN THE STRATEGY USED BY CARRION IN HIS
MOTION TO THE COURT.
ALL OF THE ABOVE WAS DISCUSSED WITH DR. JARDIM WHO, UNDER THE
CIRCUMSTANCES, AGREES WITH THE ACTION TAKEN. ADVISE.
CRIMMINS

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